

Before the  
**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**  
and the  
**RURAL UTILITIES SERVICE**

Broadband Initiatives Program

and

Broadband Technology Opportunities Program

NTIA Docket No. 0907141137-9137-05

**COMMENTS OF LOUDOUN COUNTY, VIRGINIA;  
OPENBAND MULTIMEDIA, LLC; AND ROADSTAR INTERNET, INC.**

Eugene D. Troxell  
Director of Information Technology  
County of Loudoun  
419715 Loudoun Center Place  
Leesburg, VA 20175

Martin Dougherty  
CEO  
Roadstar Internet, Inc.  
20130 Lakeview Center Plaza, Suite 140  
Ashburn, Virginia 20147

James Brabham  
COO  
OpenBand  
22461 Shaw Rd  
Dulles, Virginia 20166

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## **SUMMARY**

Loudoun County, Virginia (the “County”), OpenBand Multimedia, LLC (“OpenBand”), and Roadstar Internet, Inc. (“Roadstar”) (collectively, the “Joint Commenters”), respectfully submit these comments in response to the Joint Request for Information (“RFI”) of the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”). The Joint Commenters have a number of suggestions for improving the application process, but the most important thing the agencies can do is to direct as much funding as possible to “middle mile” projects that will serve community anchor institutions.

The Joint Commenters strongly support the emphasis that the RFI has placed on middle mile projects designed to connect key anchor institutions. This is precisely the model recommended by the County in its prior comments, and the model that OpenBand and Roadstar have used in developing their pending first round proposals. The Joint Commenters also urge the agencies to direct as much funding as possible in the second round to projects that can demonstrate commitments from one or more last mile providers to use the network to deliver last mile service. Just as last mile providers cannot serve customers effectively without adequate middle mile facilities, middle mile networks are most effective when they connect both anchor institutions and last mile facilities.

The Joint Commenters also address the following points:

- The agencies should consider simplifying the financial disclosures required of established companies.
- Applications should allow for flexibility both in allowing for various models of public sector participation in projects, as well as in describing the role of

individual partnership participants, consortium members, or anchor tenants, as the case may be.

- In areas that have seen recent population growth, reliance on nine-year-old census data allows incumbent service providers to distort the proportion of unserved and underserved households in a proposed service area.
- Volunteer reviewers should be replaced by contractors or government staff.
- Regional applications should not be given particular consideration in the review process.
- Projects that extend service to schools and libraries will reduce the need for e-rate funding, and thus should be favored.
- The “rural remote” concept should be eliminated.
- The current public notice system is unfair and inaccurate. The agencies should require that incumbent providers prove the actual scope of their existing broadband penetration by submitting actual customer data. The agencies should also consider information submitted by local governments about which areas are unserved or underserved.
- It is impractical to apply the cost effectiveness factors suggested in the RFI.

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**I. INTRODUCTION.**

Loudoun County, Virginia (the “County”), OpenBand Multimedia, LLC (“OpenBand”), and Roadstar Internet, Inc. (“Roadstar”) (collectively, the “Joint Commenters”), respectfully submit these comments in response to the Joint Request for Information (“RFI”) of the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”). The Joint Commenters have a number of suggestions for improving the application process, but the most important thing the agencies can do is to direct as much funding as possible to “middle mile” projects that will serve community anchor institutions.

In its comments on the agencies’ prior RFI, the County emphasized that the most cost-effective approach to extending broadband services to as many potential subscribers as possible is to build “middle mile” fiber backbone networks that allow providers to interconnect with their own last-mile facilities. OpenBand and Roadstar agree with that approach, and have submitted applications in response to the first NoFA proposing such projects. The County supports the existing applications of the two providers.

## **II. COMMENTS REGARDING THE APPLICATION AND REVIEW PROCESS.**

The Joint Commenters will address in turn each of the major topics identified in the RFI.

### **A. Streamlining the Applications.**

#### **1. New Entities.**

The Joint Commenters believe that the current financial reporting requirements discourage the participation of medium-sized privately-held firms. Many applications seem to have been submitted by start-up ventures, with no track records. Such companies have no reservations about submitting financial information because they have little or nothing to disclose. Large, publicly-traded companies similarly have nothing to lose. Companies like Roadstar and OpenBand, however, are less likely to participate if they have to disclose confidential financial information. In particular, the obligation to disclose such information discourages the formation of joint ventures between potential competitors, since one company may be reluctant to share such information with another. The Joint Commenters believe that it may be sufficient for established providers that are already actively providing broadband services to provide copies of tax filings, rather than internal financial records. Tax filings would be sufficient to show that a company has been earning a profit, and therefore has a proven track record. This is especially the case if the agencies continue to rely on volunteer reviewers, who may not have the expertise to properly evaluate the financial statements that are currently required.

#### **2. Consortiums and Public-Private Partnerships.**

For the agencies to evaluate a multi-party proposal properly, they certainly must understand the role of each member of the consortium or partnership. Nevertheless, it is not necessary to require the same specific information of each member of a consortium. It is in the interests of such applicants to showcase their strengths, and to describe what each participant

offers to the overall project. As long as the format of the application itself permits joint applicants to provide all the relevant information regarding each member of the consortium, the process should be sufficiently flexible to handle consortia and public-private partnerships.

The Joint Commenters also believe that consortium proposals that can show that a broad range of public policy and private sector needs can be met should receive favorable treatment in the evaluation process. The agencies should give greater weight to applications that include a local government partner, whether in the form of a formal public-private partnership or a looser consortium or anchor tenant arrangement. As discussed below, middle mile projects designed to extend service to both community anchor institutions and private sector subscribers should receive the highest priority.

### 3. Specification of Service Areas.

OpenBand and Roadstar understand the reasons for reliance on census data, but this method is highly unreliable, especially in areas that have seen substantial growth since the 2000 census. The problem is that incumbent providers can show how many households they serve in an area based on current data. When percentages are computed purporting to show the proportion of households that are unserved, the result is obviously skewed, since the denominator will be lower than the actual number of households. And in areas that have seen substantial growth, it may be much lower. The overall number of households may still be relatively low, and the incumbent provider may not even have increased its subscribership significantly, but dividing a nine-year old census figure into a current subscriber number will exaggerate the proportion of unserved or underserved households.

4. Relationship Between BIP and BTOP.

The Joint Commenters believe that some applications could be streamlined by not requiring submission of information useful only to RUS, when it is clear from the nature of the application that RUS will not fund the project. It might be helpful for RUS to clarify its standards further so applicants could better evaluate whether they should apply only for an NTIA grant. Nevertheless, on the whole, the single application method works well.

**B. Transparency and Confidentiality.**

The Joint Commenters have no proposals on these issues.

**C. Outreach and Support.**

Open Band and Roadstar have found the current level of outreach and support to be effective, and have no suggestions for changes.

**D. NTIA Expert Review Process.**

The Joint Commenters believe that volunteer reviewers should be replaced by paid outside contractors, or government staff members. Volunteer reviewers are more difficult to instruct and oversee, which raises concerns regarding quality control, and the objectivity of the reviewing process.

**III. COMMENTS ON POLICY ISSUES.**

**A. Funding Priorities and Objectives.**

1. Middle Mile Projects.

The Joint Commenters are pleased to see the emphasis that the RFI has placed on Middle Mile projects designed to connect key anchor institutions. This is precisely the model recommended by the County in its prior comments, and the model that OpenBand and Roadstar have used in developing their pending first round proposals. The Joint Commenters recommend

that the agencies direct as much funding as possible to these kinds of projects, simply because it will be the most cost-effective use of the limited funding available. The Joint Commenters also urge the agencies to direct as much funding as possible in the second round to projects that can demonstrate commitments from one or more last mile providers to use the network to deliver last mile service. Just as last mile providers cannot serve customers effectively without adequate middle mile facilities, middle mile networks are most effective when they connect both anchor institutions and last mile facilities.

The Joint Commenters also support the creation of “comprehensive communities” that can extend the reach of health, medical and education services. Public safety and other local agencies should be included as well. Such projects will be more sustainable over the long run if they allow for the active participation of local public entities and institutions representing the interests of the communities to be served. Allowing for local government participation is essential because so many health, education, and social service agencies are currently served by local networks. Furthermore, local governments can catalyze demand by helping to identify, categorize, and organize the needs of public sector agencies. Therefore, not only public-private partnerships, but also models that allow for or include less formal participation by public entities and local institutions should be favored, whether in the form of consortia, anchor tenant arrangements, or other similar structures.

## 2. Economic Development.

The Joint Commenters do not believe that regional applications should be given any particular consideration or advantage in the review process. The agencies have no lack of worthy applications: the focus of the review process should therefore be on the viability of each proposed project. Regional projects may be attractive in some ways, but they are also inherently



more complex and therefore less likely to be completed in a timely fashion. If the agencies concentrate in identifying those projects that are most likely to succeed, they will have made the best use of their time and the public's money.

3. Targeted Populations.

The Joint Commenters believe that middle mile projects that will extend service to schools and libraries should be favored, because once such institutions have direct access to a high capacity fiber optic network, their need for e-rate funding will be eliminated or sharply reduced, thus freeing such funds for other potential users.

4. Other Changes.

As discussed above in Section III(a)(1), the agencies should direct as much funding as possible to middle mile projects designed to connect key anchor institutions. To that end, NTIA and RUS should adjust their scoring criteria to give "Comprehensive Community" projects substantial preference.

**B. Program Definitions.**

The Joint Commenters believe that Middle Mile projects should be evaluated on the basis of their ability to extend capacity to last mile providers. As we read the definition of "underserved area" for purposes of Middle Mile projects, only one interconnection point need be in a proposed service area that is unserved or underserved for purposes of a Last Mile project. This is an appropriate definition, provided that the application scoring system does not take into account the extent to which a Middle Mile project passes through more densely populated or better areas. For example, a Middle Mile project may need to pass considerable distances through areas that have ample broadband service before reaching a point at which suitable access to the Internet is possible.

The Joint Commenters also believe that the “rural remote” concept will not promote the most effective use of the available funding. We believe that the overall purposes of the BIP program would be best met simply by extending service to as many rural areas as possible.

**C. Public Notice of Service Areas.**

The Joint Commenters agree that the current review process, under which incumbent providers can assess the areas proposed to be served in applications, is unfair to many applicants. If incumbents are to be allowed to comment on where service is available, applicants must be permitted to rebut any evidence introduced by an incumbent. Furthermore, to the extent that an incumbent seeks to prove that an area is in fact served by broadband facilities using information about its own network and subscribers, that information must be disclosed in a way that applicants can determine its accuracy. In other words, if the present system is retained, incumbents must be required to provide the names and addresses of any of their current subscribers within a proposed service area.

The agencies must also carefully evaluate the accuracy of any data made available through the State Broadband Data and Development Grant Program. While we do not wish to prejudge the quality of that effort, there may be inaccuracies in that data when it becomes available, or disclaimers in the resulting maps, that limit their usefulness.

The Joint Commenters also believe that the agencies should accept information from other public entities – such as the County – which have information regarding the actual footprints of service providers operating within their jurisdictions. Indeed, this information should be given substantial weight, since it is unlikely to be affected by competitive considerations.

**D. Interconnection and Nondiscrimination.**

The Joint Commenters have no proposals on these issues.

**E. Sale of Assets.**

The Joint Commenters have no proposals on these issues.

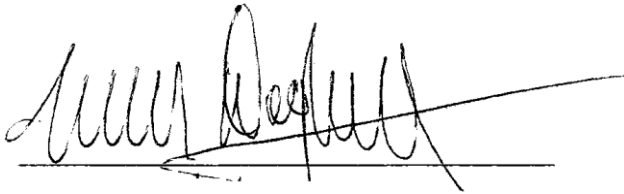
**F. Cost Effectiveness.**

The factors identified in the RFI on this topic are in theory logical points to be considered, especially for last mile projects, but they are very difficult to apply even in that context. They are even more difficult to apply to middle mile projects. We do not believe there is an effective way to take these considerations into account without creating unfair distinctions between applications. The Joint Commenters believe that once a grant is made costs can be verified as part of the audit process.

## CONCLUSION

The RFI's emphasis on middle mile networks serving anchor institutions coincides with the model proposed by the County in its prior comments, and the specific proposals submitted by RoadStar and OpenBand. Funding such proposals would meet the goals of the Recovery Act by delivering state-of-the-art technology to the full range of community service organizations, while offering a cost-effective approach to extend service to residential and business customers. The Joint Commenters strongly urge NTIA and RUS to give priority to that model.

Respectfully submitted,



Martin Dougherty  
CEO  
Roadstar Internet, Inc.  
20130 Lakeview Center Plaza, Suite 140  
Ashburn, Virginia 20147  
mdougherty@roadstarinternet.com  
703-554-6620



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Eugene D. Troxell  
Director of Information Technology  
County of Loudoun  
419715 Loudoun Center Place  
Leesburg, Virginia 20175  
Gene.Troxell@loudoun.gov  
703-777-0199



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James Brabham  
COO  
OpenBand  
22461 Shaw Rd  
Dulles, Virginia 20166  
James.Brabham@mcdean.com  
703.802.6231x1601

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